



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF S-P-I, INC.

DATE: JUNE 27, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a manufacturer and distributor of generic pharmaceuticals, seeks to permanently employ the Beneficiary as a “senior chemist – analytical R&D” under the immigrant classification of advanced degree professional. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director, Nebraska Service Center, denied the petition. The Director found that the labor certification allowed an applicant to qualify for the job offered with less than an advanced degree, and therefore did not support the requested classification of advanced degree professional.

The matter is now before us on appeal. The Petitioner submits a brief and additional documentation, and asserts that the minimum educational requirement of the labor certification is consistent with the petition’s classification request of advanced degree professional. Upon *de novo* review, we will dismiss the appeal.

I. LAW AND ANALYSIS

A. The Roles of the DOL and USCIS in the Immigrant Visa Process

A United States employer’s sponsorship of a foreign national for lawful permanent residence is a three-part process. First, the U.S. employer must obtain a labor certification, which the DOL processes. *See* 20 C.F.R. § 656 *et seq.* The labor certification states the position’s job duties and the position’s education, experience and other special requirements along with the required proffered wage and work location(s). The beneficiary states and attests to his or her education and experience. The DOL’s role in certifying the labor certification is set forth at section 212(a)(5)(i) of the Act. The DOL’s certification affirms that, “there are not sufficient [U.S.] workers who are able, willing, qualified” to perform the position offered where the beneficiary will be employed, and that the employment of such beneficiary will not “adversely affect the wages and working conditions of workers in the United States similarly employed.” *See* section 212(a)(5)(A)(i) of the Act.

Following labor certification approval, a petitioner files a Form I-140, Immigrant Petition for Alien Worker, with U.S. Citizenship and Immigration Services (USCIS) within the required 180 day labor

certification validity period. *See* 20 C.F.R. § 656.30(b)(1); 8.C.F.R. § 204.5. USCIS then examines whether: the petitioner can establish its ability to pay the proffered wage, the petition meets the requirements for the requested classification, and the beneficiary has the required education, training, and experience for the position offered. *See* section 203(b)(3)(A)(ii) of the Act and the regulation at 8 C.F.R. § 204.5.¹

Thus, it is the DOL's responsibility to determine whether there are qualified U.S. workers available to perform the job offered, and whether the employment of the beneficiary will adversely affect similarly employed U.S. workers. It is the responsibility of USCIS to determine whether the job offered and the beneficiary are eligible for the requested employment-based immigrant visa classification, and if the beneficiary qualifies for the job offered under the terms of the labor certification.

B. Eligibility for the Classification of Advanced Degree Professional

Section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), provides immigrant classification, *inter alia*, to members of the professions holding advanced degrees. *See also* 8 C.F.R. § 204.5(k)(1).

The regulation at 8 C.F.R. § 204.5(k)(2) defines "advanced degree" as follows:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

The regulation at 8 C.F.R. § 204.5(k)(3)(i) states that a petition for an advanced degree professional must be accompanied by:

- (A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
- (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

¹ In the third and final step, the beneficiary would file a Form I-485, Application to Register Permanent Residence or Adjust Status, either concurrently with the I-140 petition based on a current priority date, or following approval of an I-140 petition and a current priority date. *See* 8 C.F.R. § 245.

In addition, the regulation at 8 C.F.R. § 204.5(k)(4)(i) provides that the job offer portion of the labor certification that accompanies the petition must require a professional holding an advanced degree. The regulation reads, in pertinent part, as follows:

Every petition under this classification must be accompanied by an individual labor certification from the Department of Labor . . . The job offer portion of the individual labor certification . . . must demonstrate that the job requires a professional holding an advanced degree or the equivalent . . .

Therefore, the labor certification must require at least a U.S. bachelor's degree or a foreign equivalent degree (plus 5 years of qualifying experience) to make a job eligible for classification as an advanced degree professional.

C. Minimum Requirements of the Labor Certification

The instant petition, Form I-140, was filed on November 23, 2015. As required by statute, the petition was accompanied by an ETA Form 9089, Application for Permanent Employment Certification, which was filed with the U.S. Department of Labor (DOL) on January 9, 2015, and certified by the DOL (labor certification). In Section H of the ETA Form 9089 the Petitioner set forth the following requirements for the proffered position of senior chemist – analytical R&D:

4.	Education: Minimum level required:	Bachelor's degree
4-B.	Major Field of Study:	Chemistry, Pharmacy, Pharmaceutical Science, or foreign equivalent
5.	Is training required for the job opportunity?	No
6.	Is experience in the job offered required?	No
7.	Is there an alternate field of study that is acceptable?	Yes
7-A.	If Yes, specify the major field of study:	Chemistry, Pharmacy, Pharmaceutical Science, or foreign equivalent
8.	Is an alternate combination of education and experience acceptable?	Yes
8-A.	Alternate level of education required:	Other
8-B:	Alternate level of education required:	3 year bachelor degree or 2 year master degree or combination evaluated
8-C	Number of years experience acceptable:	5 years
9.	Is a foreign educational equivalent acceptable?	Yes
10.	Is experience in an alternate occupation acceptable?	Yes
10-A.	Number of months required:	60 months
10-B.	Job title(s) of acceptable alternate occupation:	Research Associate, Quality Control Chemist, or combination thereof

14. Specific skills or other requirements:

Bachelor degree in Chemistry, Pharmacy, Pharmaceutical Science or foreign equivalent and five years of progressive, post-baccalaureate experience in the position of Research Associate, Quality Control Chemist or combination thereof. Alternatively, will accept either a foreign three year bachelor degree or a two year master degree or combination evaluated as equivalent to at least a U.S. bachelor degree. Any suitable combination of education, training and experience evaluated as equivalent to at least a U.S. bachelor degree all acceptable. Experience must include three years in pharmaceutical industry performing method development and method validation using HPLC, UV, FTIR, dissolution apparatus for raw material and finished product.

As evidence of the Beneficiary's education and experience the Petitioner submitted copies of the following documentation with the Form I-140 petition:

- A diploma and transcript from [REDACTED] in [REDACTED] State of [REDACTED] India, showing that the Beneficiary was awarded a bachelor of science in chemistry on December 15, 1998, following the completion of a 3-year degree program;
- Another diploma and transcript from [REDACTED] showing that the Beneficiary was awarded a master of science in physical chemistry on December 15, 2000, following the completion of what appears to have been a 2-year degree program;
- An "Academic Equivalency Evaluation" from [REDACTED] dated November 4, 2010, stating that the Beneficiary's bachelor of science degree from [REDACTED] was equivalent to 3 years of university study in the United States and that his subsequent master of science degree from [REDACTED] was equivalent to a bachelor of science degree in the field of chemistry from an accredited U.S. college or university.
- A letter dated November 7, 2011, from human resources director of [REDACTED] stating that the Beneficiary had been employed with [REDACTED] as an analytical chemist from November 29, 2004 to January 4, 2011, and describing the job duties he performed.

On December 8, 2015, the Director denied the petition on the ground that the language of the labor certification indicated that a person could qualify for the job offered with a foreign 3-year bachelor's degree, or a 2-year master's degree, or a combination of those two degrees evaluated as equivalent to a U.S. bachelor's degree, or a combination of education, training and experience evaluated as equivalent to a U.S. bachelor's degree. Noting that a U.S baccalaureate degree generally requires 4 years of education, citing *Matter of Shah*, 17 I&N Dec. 244 (Reg'l Comm'r 1977), the Director found that the labor certification permitted an applicant to meet the minimum educational requirement with less than a U.S. bachelor's degree or a foreign equivalent degree. The Director concluded, therefore, that the petition could not be approved for the job classification of advanced degree professional regardless of the Beneficiary's individual qualifications.

As previously discussed, the academic documentation in the record indicates that the Beneficiary has two degrees from India's [REDACTED] – a 3-year bachelor of science in chemistry and a

master of physical chemistry that appears to have been a 2-year degree program. The Educational Database for Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), advises that these degrees are comparable to 3 years of university study in the United States and a bachelor's degree in the United States, respectively.² Thus, it appears that the Beneficiary has a foreign equivalent degree to a U.S. baccalaureate degree, in accord with the specifications of 8 C.F.R. § 204.5(k)(2) and 8 C.F.R. § 204.5(k)(3)(i)(B), in one of the major fields of study specified on the labor certification.

However, the Beneficiary's academic credentials do not make him eligible for classification as an advanced degree professional unless the labor certification itself, in accord with 8 C.F.R. § 204.5(k)(4)(i), requires at least a U.S. bachelor's degree or a foreign equivalent degree. As the Director stated in his decision, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. We may not ignore a term of the labor certification, nor may we impose additional requirements. *See Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983). The only rational manner for USCIS to interpret the meaning of terms used in a labor certification to describe the requirements of a job is to examine the certified job offer exactly as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F.Supp. 829 833 (D.D.C. 1984). Our interpretation of the job's requirements must involve reading and applying the *plain language* of the labor certification form. *Id.* at 834.

In this case the labor certification sets forth a series of alternative credentials in boxes H.4 and H.4-B, H.7 and H.7-A, H.8, H.8-A and H.8-B, H.9, and H.14 of the ETA Form 9089 that would satisfy the minimum educational requirement for the job of "senior chemist – analytical R&D." They include the following:

- A bachelor's degree in chemistry, pharmacy, pharmaceutical science, or a foreign equivalent; or
- A 3-year bachelor's degree in one of the specified fields of study, or a foreign educational equivalent, evaluated as equivalent to at least a U.S. bachelor's degree; or
- A 2-year master's degree in one of the specified fields of study, or a foreign educational equivalent, evaluated as equivalent to at least a U.S. bachelor's degree; or
- A combination of degrees evaluated as equivalent to at least a U.S. bachelor's degree in one of the specified fields of study, or a foreign educational equivalent; or
- A combination of education, training, and experience evaluated as equivalent to at least a U.S. bachelor's degree in one of the specified fields of study.

² According to its website, AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in more than 40 countries." AACRAO, <http://www.aacrao.org/home/about> (last accessed March 31, 2016). "Its mission is to provide professional development, guidelines, and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology, and student services." *Id.* EDGE is "a web-based resource for the evaluation of foreign educational credentials." AACRAO EDGE, <http://edge.aacrao.org/info.php> (last accessed March 31, 2016). USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.

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As pointed out in the Director's decision, a bachelor's degree in the United States generally requires 4 years of education. *See Matter of Shah*, 17 I&N Dec. at 245. As discussed hereinafter, not all of the alternative minimum requirements in the labor certification meet this threshold.

The Petitioner asserts that the job requirements on its labor certification meet the requirements for advanced degree professional classification because, contrary to the Director's finding, they require a beneficiary to have a U.S. bachelor's degree or a foreign equivalent degree as well as 5 years of experience in the specialty. With respect to the 3-year bachelor's degree requirement, the Petitioner claims that only those degrees that are evaluated as equivalent to a U.S. bachelor's degree are acceptable. As evidence that some 3-year bachelor's degrees are equivalent to a U.S. bachelor's degree, the Petitioner has submitted two evaluations, one from [REDACTED] updated June 10, 2014, and the other from [REDACTED] dated December 15, 2015.

The [REDACTED] evaluation presents its policy with respect to 3-year bachelor's degrees in India based on two studies it conducted of the Indian educational system. [REDACTED] recognizes 3-year bachelor's degrees in India as equivalent to U.S. bachelor's degrees when two conditions are met: (1) the degrees were earned in "Division 1" and (2) the awarding institutions have been accredited by India's National Assessment and Accreditation Council (NAAC) with a grade of "A" or better. The [REDACTED] evaluation has little utility in the instant proceeding. It does not define the terms "Division 1" and "a grade of A." So it is impossible from the evaluation itself to determine what distinguishes a 3-year Indian degree that [REDACTED] considers equivalent to a U.S. bachelor's degree from a 3-year Indian degree that it does not consider equivalent to a U.S. bachelor's degree.

As for the [REDACTED] evaluation, it applies the two-pronged evaluation criteria of [REDACTED] and concludes that "there are indeed 3-year bachelor's degrees [in India] that are equivalent in level, structure, scope and intent to U.S. bachelor's degrees." The [REDACTED] evaluation asserts that outside the United States 3-year bachelor's degree programs are common, and that some would equate to U.S. bachelor's degree programs. The United Kingdom, Israel, Canada, and Italy are identified as countries offering 3-year bachelor's degrees that are regarded in EDGE as equivalent to U.S. bachelor's degrees. The [REDACTED] evaluation cites no specific credential advice entries in EDGE that support its claim, however, and does not identify any specific degrees in the referenced countries to which the alleged U.S. equivalency applies. Nor does the [REDACTED] evaluation cite any credential advice entry in EDGE which supports its claim that some 3-year bachelor's degrees in India are equivalent to U.S. bachelor's degrees. We have independently surveyed EDGE, and found none. As previously noted, USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.

Evaluations of academic and other credentials by credentials evaluation organizations are utilized by USCIS as advisory opinions only. Where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept it or may give it less weight. *See Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm'r 1988). For the reasons discussed above, we determine that the [REDACTED] and [REDACTED] evaluations have little probative value. They are not persuasive evidence that some 3-year bachelor's degrees in India are equivalent to U.S. bachelor's degrees.

Even if the Petitioner could establish that some 3-year bachelor's degrees in India are equivalent to U.S. bachelor's degrees, the labor certification still allows the minimum educational requirement of the job offered to be fulfilled by either a combination of degrees evaluated as equivalent to a U.S. bachelor's degree or a combination of education, training, and experience evaluated as equivalent to a U.S. bachelor's degree. Neither of these alternatives is consistent with the regulatory requirement of a single "United States baccalaureate degree" or a single "foreign equivalent degree" to be eligible for advanced degree professional classification. *See* 8 C.F.R. §§ 204.5(k)(2) and 204.5(k)(3)(i)(B). A combination of degrees evaluated as equivalent to a U.S. bachelor's degree would not meet the regulatory requirement if no single degree is equivalent to a U.S. bachelor's degree. A combination of education, training, and experience evaluated as equivalent to a U.S. bachelor's degree would not meet the regulatory requirement because the regulations require a degree and do not allow for an educational equivalent composed in part of training or experience. Since the terms of the labor certification do not require that the Beneficiary have at least a U.S. bachelor's degree or a foreign equivalent degree to qualify for the job offered, we agree with the Director that the labor certification does not support the requested classification of advanced degree professional. On this ground alone, the petition cannot be approved.

D. Beneficiary's Experience

To be eligible for approval under the immigrant visa petition, the Beneficiary must have all the education, training, and experience specified on the underlying labor certification as of the petition's priority date, which is the date the labor certification application was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg'l Comm'r 1977). The priority date of the instant petition is January 9, 2015.

The labor certification requires 5 years of experience as a research associate, quality control chemist, or a combination thereof. (ETA Form 9089, boxes H.8-C, H.10, H.10-A, and H.10-B). According to the labor certification, Part K, the Beneficiary's qualifying experience consisted of two jobs prior to the commencement of his employment with the Petitioner on January 10, 2011. They included:

- Research associate with [REDACTED] a pharmaceutical company in [REDACTED] India, from November 29, 2004, to December 14, 2006; and
- Quality control chemist with [REDACTED] a pharmaceutical company in [REDACTED] Maryland, from December 18, 2006, to January 4, 2011.

As evidence of the Beneficiary's prior employment, however, the Petitioner submitted a single letter dated November 7, 2011, on the letterhead of [REDACTED] from Human Resources Director [REDACTED]. The letter, which identifies two addresses for [REDACTED] in [REDACTED] Maryland and [REDACTED] Pennsylvania, asserts that the Beneficiary was employed by [REDACTED] from November 29, 2004 to January 4, 2011, and describes the duties he performed. While the dates of alleged employment with [REDACTED] coincide with the time period of the Beneficiary's first two jobs (chronologically) in the labor certification, and the Maryland address of [REDACTED] appears to be the same as that of [REDACTED] the

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employment verification letter does not mention the work allegedly performed in India from November 2004 to December 2006. Thus, the letter from [REDACTED] conflicts with the information provided in the labor certification (box K.c of the ETA Form 9089) with regard to the Beneficiary's employment experience during the 2-year time period from November 29, 2004, to December 14, 2006. The remaining time period of qualifying employment – from December 2006 to January 2011 – was a little over 4 years, which is less than the 5 years required in the labor certification to qualify for the job offered.

It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of the applicant's remaining evidence. *See id.* In any future proceedings the Petitioner must submit additional evidence to clarify where the Beneficiary was working, and for whom, during the time period of November 2004 to December 2006.

II. CONCLUSION

We affirm the Director's finding that the labor certification does not support the requested classification of advanced degree professional because the minimum education required on the labor certification is less than a U.S. bachelor's degree or a foreign equivalent degree. Accordingly, the petition cannot be approved and the appeal will be dismissed.

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of S-P-I, Inc.*, ID# 17828 (AAO June 27, 2016)